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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
TUCSON DIVISION**

Jane Doe, by her next friend and parents
Helen Doe and James Doe; and Megan Roe,
by her next friend and parents, Kate Roe and
Robert Roe,

Plaintiffs,

v.

Thomas C. Horne in his official capacity as
State Superintendent of Public Instruction;
Laura Toenjes, in her official capacity as
Superintendent of the Kyrene School
District; Kyrene School District; The
Gregory School; and Arizona Interscholastic
Association Inc.,

Defendants,

Warren Petersen, in his official capacity as
President of the Arizona State Senate, and
Ben Toma, in his official capacity as
Speaker of the Arizona House of
Representatives,

Intervenor-Defendants.

Case No. 4:23-cv-00185-JGZ

**PLAINTIFFS' REPLY IN SUPPORT OF
THEIR MOTION FOR A PROTECTIVE
ORDER**

INTRODUCTION

1
2 If the Court orders Intervenor-Defendants President Warren Petersen and Speaker
3 Ben Toma to sit for depositions, Intervenor-Defendants seek depositions of minor Plaintiffs
4 Jane Doe and Megan Roe, two transgender girls who are twelve and sixteen years old
5 respectively. Intervenor-Defendants *still* have not identified a single topic that Jane and
6 Megan must testify about that their mothers cannot. And they plan to ask Jane and Megan
7 highly sensitive questions about their medical and mental health treatment, including about
8 the legitimacy of such treatment and to imagine their life without it. Intervenor-Defendants
9 also would like to question Jane and Megan about whether they have engaged in sexual
10 assault or other misconduct—a topic that is irrelevant and has no basis in the evidentiary
11 record. Intervenor-Defendants claim that they have an unqualified “right” to take these
12 depositions and ask these questions and that Plaintiffs have not adequately shown that they
13 will be harmed by Intervenor-Defendants’ questioning. Intervenor-Defendants are wrong
14 on both counts. Because Plaintiffs have demonstrated good cause under Federal Rule of
15 Civil Procedure 26(c)(1), this Court should enter a protective order preventing their
16 depositions or, in the alternative, setting reasonable limits on any depositions noticed, as
17 outlined in Plaintiffs’ opening brief and herein.

I. **Whether the Court Orders Intervenor-Defendants to Sit for Depositions Is Irrelevant to the Substantive Arguments in Plaintiffs’ Motion for a Protective Order.**

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20 Intervenor-Defendants spend much of their brief in opposition to Plaintiffs’ motion
21 for a protective order explaining why *they*—that is, Intervenor-Defendants—should not be
22 deposed. (Dkt. 199 (“Opp. Br.”) at 3, 6–8.) However, Plaintiffs’ motion to compel
23 discovery from Intervenor-Defendants and the present motion for a protective order are
24 unrelated, except insofar as Intervenor-Defendant have expressed a tit-for-tat intention to
25 depose Jane and Megan only if the motion to compel is granted. The substance of and
26 grounds for the two motions concern completely different issues. The current motion
27 centers on Federal Rule of Civil Procedure 26(c) and whether good cause exists to issue an
28 order protecting Jane and Megan from the “embarrassment, oppression, or undue burden”

1 of sitting for depositions. The motion to compel involves claims of legislative and
2 deliberative process privilege, among other doctrines. Accordingly, the Court should
3 disregard Intervenor-Defendants’ attempts to analyze these two motions together and
4 should decide each on its own merits.

5 **II. Good Cause Exists for a Protective Order Preventing the Depositions of**
6 **Jane and Megan.**

7 It is axiomatic that a plaintiff can seek a protective order preventing a deposition
8 where she meets the standard set forth by Rule 26(c). *See* Fed. R. Civ. P. 26(c)(1) (“*A*
9 *party . . . may move for a protective order in the court where the action is pending.*”
10 (emphasis added)). Under Rule 26(c)(1), a court “may, for good cause, issue an order to
11 protect a party or person from annoyance, embarrassment, oppression, or undue burden or
12 expense” in the discovery process, including an order “forbidding inquiry into certain
13 matters, or limiting the scope of disclosure or discovery to certain matters.”¹ Jane and
14 Megan have clearly met that standard here. As explained in Plaintiffs’ opening brief,
15 Intervenor-Defendants’ plan to ask Jane and Megan intrusive questions about their gender
16 dysphoria, their medical and mental health treatment, and whether they have engaged in
17 sexual assault and misconduct. These topics will cause oppression and undue burden to
18 Jane and Megan—two transgender minors who already face daily social stigma and
19 discrimination based on their identities. (Dkt. 196 (“Pls.’ Br.”) at 3–4.)

20 Intervenor-Defendants appear to take the position that they have a “right” to depose
21 Jane and Megan because Jane and Megan are plaintiffs in a lawsuit. (*See* Opp. Br. at 3–4.)
22 Not so. The two cases Intervenor-Defendants cite in support of this proposition are
23 inapplicable because in both the courts were responding to plaintiffs who sought to prevent
24 their depositions because it would be inconvenient for them to travel to the deposition
25 locations (which were in the forums where the plaintiffs originally filed suit). *See Diaz v.*
26 *Vigil*, 2007 WL 427122, at *1 (E.D. Cal. Feb. 6, 2007); *Susilo v. Robertson*, 2013 WL

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28 ¹ Intervenor-Defendants consistently cite Rule 26(b)(1), which sets out the “general”
scope of discovery. (*See, e.g.,* Opp. Br. at 3.) But Rule 26(b)(1) lists the scope of
discovery “[u]nless otherwise limited by court order.” (emphasis added).

1 12151377, at *1 (C.D. Cal. Aug. 30, 2013). They do not establish an unqualified “right”
2 for a defendant to depose a plaintiff in any circumstance and regardless of the plain
3 language of Rule 26(c).

4 Moreover, nowhere in Intervenor-Defendants’ opposition do they deny that the
5 planned depositions, particularly based on the lines of questioning they have detailed, will
6 be emotionally harmful for Jane and Megan. Instead, they argue that: (1) other courts have
7 allowed depositions of minors; and (2) Jane and Megan have not met their burden of
8 showing “specific prejudice or harm.” (Opp. Br. at 5–7.) As to first argument, the cases
9 Intervenor-Defendants cite are easily distinguishable because they did not involve the
10 questioning discussed above, about the minors’ gender identity, medical and mental health
11 treatment, or sexual conduct.² As to the second argument, contrary to their suggestion,
12 Intervenor-Defendants have not pointed to a Ninth Circuit case where a party seeking a
13 protective order was required to submit “affidavits or specific evidence” in support of its
14 motion.³ (Opp. Br. at 6.) Rather, Intervenor-Defendants note the Ninth Circuit holding
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16 ² In two of the four cases cited by Intervenor-Defendants, the minor in question was
17 a firsthand witness to an incident for which she sought recovery from the defendant.
18 See *Askew v. City of Plantation*, 2017 WL 11678312, at *1–2 (S.D. Fla. Feb. 6,
19 2017) (minor was allegedly injured by police and sought recovery); *Smith v. State*
20 *Farm Mutual Auto. Ins. Co.*, 2015 WL 13908102, at *1 (N.D. W. Va. June 29, 2015)
21 (minor was injured in a car accident and sought recovery). In another, the minor was
22 a firsthand witness to conduct that may have prevented the recovery he sought.
23 *A.G.I v. City of Fresno*, 2018 WL 2045092, at *1 (E.D. Ca. Apr. 30, 2018) (minor
24 may have been involved in crimes that shed doubt on his § 1983 claim). In *M.M. v.*
25 *U.S.*, 2020 WL 4037165, (C.D. Cal. June 30, 2020), the minor “put his relationship
26 with his deceased father at issue by filing a wrongful death action seeking
27 compensation,” and the court found that the defendant was entitled to inquire about
28 the basis of his monetary loss. *Id.* at *3. Furthermore, in all four cases, the deposing
party sought information about specific *disputed* facts, which is not the case here.

³ The two out-of-Circuit cases Intervenor-Defendants cite do not move the needle.
See *Askew*, 2017 WL 11678312, at *1–2 (minor plaintiff did not submit a
memorandum of law to support her assertion that she would be traumatized by being
deposed about police incident involving her father); *Graham v. City of N.Y.*, 2010
WL 3034618, at *5 (E.D.N.Y. Aug. 3, 2010) (minor plaintiff provided “no support
for his claim that he would become unnecessarily upset” by questioning about his
father’s arrest, rendering the claim “merely speculative”).

1 that “broad allegations of harm, unsubstantiated by specific examples or articulated
2 reasoning, do not satisfy the Rule 26(c) test.” *In re Roman Cath. Archbishop of Portland*
3 *in Or.*, 661 F.3d 417, 424 (9th Cir. 2011) (citation omitted). Yet, Plaintiffs’ opening brief
4 explained exactly why Intervenor-Defendants’ proposed depositions of Jane and Megan
5 will be harmful to them in light of their ages and specific personal backgrounds,
6 particularly given Intervenor-Defendants’ intended line of questioning. (*See* Pls.’ Br. at
7 3–4, 6–7.) Therefore, Plaintiffs have already met their burden to show through “specific
8 examples or articulated reasoning” the harm they will suffer from such depositions.
9 Beyond this showing, Plaintiffs have now also provided declarations from Jane’s and
10 Megan’s mothers explaining why the proposed depositions will be harmful to their
11 daughters. (*See* Decl. of Helen Doe ¶¶ 5–9, attached as **Ex. 1**; Decl. of Kate Roe ¶¶ 5–9, ,
12 attached as **Ex. 2**.) Though Plaintiffs maintain that this additional proof is not necessary,
13 they include it to nullify Intervenor-Defendants’ concerns that they are merely
14 “speculating.” (Opp. Br. at 7.)

15 Jane and Megan have also shown that Intervenor-Defendants have alternative, less
16 intrusive ways to obtain any relevant information through depositions of Jane’s and
17 Megan’s mothers, Helen Doe and Kate Roe. Though Intervenor-Defendants dispute that
18 they can obtain the information they seek through Helen and Kate, they have not pointed
19 to a single topic that Jane and Megan must address that their mothers cannot. Intervenor-
20 Defendants claim that Jane and Megan’s navigation of “legal, administrative, and medical”
21 hurdles is “factual information possessed by Jane and Megan,” (*see* Opp. Br. at 4 n.1) but
22 this topic is not relevant to the underlying issues in this case. Furthermore, Helen and Kate
23 have been personally involved in all of these areas of their daughters’ lives. (*See* Dkt. 7,
24 Decl. of Helen Doe at ¶¶ 5–8, 11; Dkt. 9, Decl. of Kate Roe at ¶¶ 3–6, 10.) Intervenor-
25 Defendants also identify the “substantial limitations on major life activities” caused by Jane
26 and Megan’s gender dysphoria as topics only Jane and Megan can speak to. (Opp. Br. at

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1 4.) But Helen and Kate, who have been involved in their daughters’ daily lives and medical
2 care from birth, are fully knowledgeable about these topics.⁴

3 In sum, Plaintiffs have made a specific showing of the significant undue burden Jane
4 and Megan will experience being deposed by Intervenor-Defendants, particularly because
5 Jane’s and Megan’s mothers’ can fully address all the topics Intervenor-Defendants wish
6 to explore. Intervenor-Defendants have not overcome this showing, and the Court should
7 accordingly grant Plaintiffs’ motion for a protective order preventing the depositions of
8 Megan and Jane entirely.

9 **III. The Limitations Plaintiffs Have Proposed in the Alternative Are**
10 **Reasonable and Should Be Adopted.**

11 If the depositions of Jane and Megan proceed, Plaintiffs request that the Court order
12 three limitations: (1) Intervenor-Defendants/Defendants cannot pursue questioning
13 concerning either the legitimacy or appropriateness of the minor Plaintiffs’ medical and/or
14 mental health treatment;⁵ (2) Intervenor-Defendants/Defendants cannot refer to the minor
15 Plaintiffs’ medical records and letters from mental health providers or questions about the
16 contents of those records/letters; and (3) Intervenor-Defendants/Defendants cannot ask
17 questions referencing sexual abuse, assault, or misconduct. (Pls.’ Br. at 5–6.) Intervenor-
18 Defendants arguments rejecting all three reasonable limitations are baseless.

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21 ⁴ Intervenor-Defendants mischaracterize the Interrogatory response they quote. Jane
22 and Megan have identified the major life activities their gender dysphoria limits
23 “*without [their] medical treatment.*” (Dkt. 199-1, Decl. of Justin Smith, Ex. 1, at
24 11) (emphasis added). That Intervenor-Defendants intend to question Jane and
25 Megan on their ability “concentrat[e], think[,]” and experience “major bodily
26 functions of neurological and brain functioning” *without* the necessary medical care
27 they have been receiving for years (*see* Opp. Br. at 4) further demonstrates the harm
Jane and Megan will face in Intervenor-Defendants’ planned depositions, as this
line of questioning will necessarily require Jane and Megan to imagine a world
where their gender identity had not been affirmed and they were not allowed to
socially or medically transition.

28 ⁵ Plaintiffs interpret Intervenor-Defendants’ proposed line of questioning related to
Plaintiffs’ major life activities, as discussed above, to be subsumed within this first
limitation.

1 As explained in Plaintiffs’ opening brief, the first two limitations are meant to
2 protect Jane and Megan from questioning about highly personal and sensitive details
3 regarding their private medical and mental health care histories—topics on which Plaintiffs
4 have already produced substantial document and written discovery and on which Jane’s
5 and Megan’s mothers can testify. Intervenor-Defendants reject these limitations by
6 arguing that, because the two topics are relevant, any form of discovery on them must be
7 allowed under Federal Rule of Civil Procedure 26(b). As an initial matter, Plaintiffs
8 dispute that these topics are in fact relevant, as this Court has already made clear that “[t]he
9 appropriateness of treatment for gender dysphoria is not at issue in this case.” (Dkt. 127,
10 Order Granting PI at ¶ 99.) And Plaintiffs’ specific medical treatment for their gender
11 dysphoria cannot reasonably be in dispute. But even assuming *arguendo* that the topics
12 are relevant, Rule 26(b) is modified by the provision that relevant discovery is permitted
13 “[u]nless otherwise limited by court order” and provides no barrier to the entry of a
14 protective order for good cause pursuant to Rule 26(c). (*See supra* p. 3 n.1.) For the
15 reasons articulated above and in Plaintiffs’ opening brief, it is unduly burdensome to
16 require Jane and Megan to address these topics and good cause exists to limit such
17 questioning.⁶

18 The third limitation, meanwhile, seeks to prevent inquiry that is both highly
19 burdensome and completely irrelevant to any issue in this case. As discussed in their
20 opening brief, Plaintiffs included this third topic on their list of proposed limitations in
21 excess of caution based on their counsel’s experience in another case involving depositions
22 of transgender minors’ parents. In that case, there were questions suggesting that trauma,
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24 ⁶ Intervenor-Defendants’ cited cases are entirely inapplicable. *See Hollis v. Bal*, 2022
25 WL 1478927, at *3 (E.D. Cal. Apr. 27, 2022) (allowing deposition on medical issues
26 where the adult plaintiff “placed his medical records and mental health at issue by
27 alleging that defendants were deliberately indifferent to his serious medical needs
28 and by claiming damages for mental or emotional distress”); *Cooey v. Kasich*, 2011
WL 13302226, at *1 (S.D. Ohio Sept. 20, 2011) (allowing deposition by inmate on
death row regarding his would-be executioner’s health conditions and ability to
fulfill his duties); *Mills v. Jones*, 2022 WL 14751447, at *1 (E.D. Cal. Oct. 25, 2022)
(allowing deposition on the plaintiff’s criminal record).

1 such as sexual abuse or other misconduct, caused the plaintiffs’ gender dysphoria—a
2 theory with absolutely no basis in science or medicine. Here, no party has alleged that Jane
3 and Megan have experienced sexual abuse, and no party has alleged that Jane and Megan
4 have engaged in any improper conduct whatsoever—and certainly no allegation that they
5 have ever committed any acts of sexual abuse, assault, or misconduct. Intervenor-
6 Defendants have not disputed this, nor could they. Instead, Intervenor-Defendants claim
7 that because the alleged governmental interest behind the Ban is “safety for women in
8 athletics,” they are entitled to ask Jane and Megan about “a biological boy injuring a
9 biological girl during an athletic event or taking any inappropriate action in a sports team’s
10 locker room.” (Opp. Br. at 9.) However, this limitation is not targeted at questions
11 regarding injuries “during an athletic event.” Instead, it would prohibit questions
12 “referencing sexual abuse, assault, or misconduct.” In the many pages Intervenor-
13 Defendants have spent expounding on the purported safety justification for the Ban, not
14 once have they ever suggested that the Ban has anything to do with preventing sexual
15 assault or misconduct or any inappropriate action in a sports team’s locker room. Any
16 inquiry on this topic would therefore be irrelevant, harmful, and stigmatizing to Jane and
17 Megan. Accordingly, if the depositions of Jane and Megan are permitted, a protective order
18 limiting questioning on these three topics is precisely the sort of reasonable limitation the
19 Court should issue under Rule 26(c)(1).

20 CONCLUSION

21 For the foregoing reasons, the Court should grant Plaintiffs’ motion and issue an
22 order of protection preventing Jane and Megan’s depositions or, in the alternative,
23 imposing the limitations articulated above.

24 Respectfully submitted this 29th day of
March, 2024.

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**Admitted pro hac vice.*

Exhibit 1

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5 *Attorney for Plaintiffs*

6 *Additional counsel listed on following page*

7 **UNITED STATES DISTRICT COURT**
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11 Roe, by her next friend and parents, Kate
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16 School District; Kyrene School District;
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20 and Ben Toma, in his official capacity as
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21 Representatives,

22 Intervenor-Defendants.
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Case No. 4:23-cv-00185-JGZ

**DECLARATION OF HELEN DOE IN
SUPPORT OF PLAINTIFFS' MOTION
FOR A PROTECTIVE ORDER**

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12 *Admitted pro hac vice.

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1 I, Helen Doe, declare as follows:

2 1. I make this declaration of my own personal knowledge, and, if called as a
3 witness, could and would testify competently to the matters stated here.

4 2. I am the mother of Jane Doe, one of the plaintiffs in this case. Jane is a
5 twelve-year-old transgender girl.

6 3. As a transgender girl, Jane faces social stigma and state-imposed
7 discrimination simply for being herself.

8 4. My understanding is that Intervenor-Defendants wish to depose Jane if the
9 Court orders that they must sit for depositions themselves.

10 5. As part of this deposition, my understanding is that Jane would be subject to
11 questioning under oath for up to seven hours from up to six different attorneys (one for
12 each defendant in this litigation).

13 6. My understanding is also that Intervenor-Defendants' counsel wish to ask
14 Jane questions about at least the following topics:

- 15 • The legitimacy and appropriateness of her medical and/or mental
16 health treatment;
- 17 • Her medical records and letters from a mental health provider;
- 18 • Whether she has engaged in sexual abuse, assault, or other
19 misconduct;
- 20 • Her physical and mental state if she had not socially and medically
21 transitioned;
- 22 • The legal, administrative, and medical hurdles she has had to navigate
23 as a transgender person.

24 7. These topics are highly personal, sensitive, and emotional for most adults,
25 let alone a twelve-year-old transgender child. Given Jane's young age, I believe requiring
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1 her to discuss these topics in a deposition with strangers has the strong potential to be
2 uncomfortable and upsetting to her, and she should not be required to testify about them.

3 8. Particularly, I believe that any line of questioning that attacks the legitimacy
4 and appropriateness of her medical treatment would likely be damaging to her mental
5 health. Jane has recently started undergoing hormonal medical treatment for her gender
6 dysphoria. These types of questions involve personal and sensitive details regarding Jane's
7 mental health, her body, and her medical history, including the intimate decisions she has
8 made with her parents and doctors. To the extent that these topics are even remotely
9 relevant to this case, I am more than capable of answering these questions on Jane's behalf.

10 9. The same is true of a line of questioning that asks Jane to imagine her life if
11 she was not allowed to socially and medically transition. Such questioning would likely
12 be very upsetting to Jane and is no more appropriate than asking a minor with any other
13 medical condition what her life would be like if she were not able to receive needed
14 medical care.

15 10. As her mother, I have full knowledge about all of these topics, and I can
16 answer questions about them in my own deposition.

17 11. For these reasons, I request that the Court does not require Jane to sit for a
18 deposition, or in the alternative, impose reasonable limitations on such a deposition as
19 outlined in Plaintiffs' Motion for a Protective Order (Dkt. 196).

20 This declaration was executed this 28th day of March, 2024, in Maricopa County,
21 Arizona.

22 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing
23 is true and correct.

24
25 By: Helen Doe

26 Helen Doe

Exhibit 2

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5 *Attorney for Plaintiffs*

6 *Additional counsel listed on following page*

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15 Instruction; Laura Toenjes, in her official
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16 School District; Kyrene School District;
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20 and Ben Toma, in his official capacity as
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21 Representatives,

22 Intervenor-Defendants.
23

Case No. 4:23-cv-00185-JGZ

**DECLARATION OF KATE ROE IN
SUPPORT OF PLAINTIFFS' MOTION
FOR A PROTECTIVE ORDER**

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12 **Admitted pro hac vice.*

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1 I, Kate Roe, declare as follows:

2 1. I make this declaration of my own personal knowledge, and, if called as a
3 witness, could and would testify competently to the matters stated here.

4 2. I am the mother of Megan Roe, one of the plaintiffs in this case. Megan is a
5 sixteen-year-old transgender girl.

6 3. As a transgender girl, Megan faces social stigma and state-imposed
7 discrimination simply for being herself.

8 4. My understanding is that Intervenor-Defendants wish to depose Megan if the
9 Court orders that they must sit for depositions themselves.

10 5. As part of this deposition, my understanding is that Megan would be subject
11 to questioning under oath for up to seven hours from up to six different attorneys (one for
12 each defendant in this litigation).

13 6. My understanding is also that Intervenor-Defendants' counsel wish to ask
14 Megan questions about at least the following topics:

- 15 • The legitimacy and appropriateness of her medical and/or mental
16 health treatment;
- 17 • Her medical records and letters from a mental health provider;
- 18 • Whether she has engaged in sexual abuse, assault, or other
19 misconduct;
- 20 • Her physical and mental state if she had not socially and medically
21 transitioned;
- 22 • The legal, administrative, and medical hurdles she has had to navigate
23 as a transgender person.

24 7. I do not understand how these topics are relevant to this case, which involves
25 whether transgender children can be banned from school sports. These topics are highly
26 personal, sensitive, and emotional for most adults, let alone a sixteen-year-old transgender
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1 child. I believe having Megan discuss these topics with strangers in a deposition would
2 generally be highly uncomfortable, upsetting, and emotionally harmful to her.

3 8. Particularly, I believe that questions about the legitimacy and
4 appropriateness of her medical treatment would likely be damaging to her mental health.
5 These types of questions involve personal and sensitive details regarding Megan's mental
6 health, her body, and her medical history, including the intimate decisions she has made
7 with her parents and doctors. To the extent that these topics are even remotely relevant to
8 this case, I am more than capable of answering these questions on Megan's behalf.

9 9. The same is true of questions that ask Megan to imagine her life if she was
10 not allowed to socially and medically transition. Such questioning would be extremely
11 upsetting to Megan and is no more appropriate than asking a minor with any other medical
12 condition what her life would be like if she were not able to receive needed medical care.

13 10. As her mother, I have full knowledge about all of these topics, and I can
14 answer questions about them in my own deposition.

15 11. For these reasons, I request that the Court does not require Megan to sit for
16 a deposition, or in the alternative, impose reasonable limitations on such a deposition as
17 outlined in Plaintiffs' Motion for a Protective Order (Dkt. 196).

18 This declaration was executed this 28th day of March, 2024, in Pima County,
19 Arizona.

20 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing
21 is true and correct.

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24 By: Kate Roe
25 Kate Roe
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